IN THE UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF OHIO

John H. Gallagher, III)	CASE NO. 10-53739
Christine N. Gallagher)	
)	
Debtors)	
allagher. III and Christine N.	Chapter 13
)	k
sius	
lle, OH 44231	JUDGE MARILYN SHEA-STONUM
Plaintiffs	
	Adv. Proc. No.
an Chase Bank	
Dimon, CEO	COMPLAINT OBJECTING TO
Avenue, Ste 12	SECURED STATUS OF J.P. MORGAN
New York, NY 10017	CHASE BANK AND AVOIDING
	JUNIOR MORTGAGE
Defendants	
	Christine N. Gallagher Debtors allagher, III and Christine N. sius lle, OH 44231 Plaintiffs Plaintiffs an Chase Bank Dimon, CEO Avenue, Ste 12 NY 10017

- 1. Plaintiffs are Debtors in the case filed under Chapter 13 of U.S.C. Title 11, Case No. 10-51421 on August 4, 2010.
- This case is an adversary proceeding objecting to the secured status of Defendant J.P.
 Morgan Chase Bank's mortgage lien on Plaintiffs' residence.
- 3. This Court has original jurisdiction over this proceeding pursuant to 28 U.S.C. Section 1334(b), 157(a), 157(b)(1) and 151.
- 4. This proceeding is a core proceeding under 28 U.S.C. Sec. 157(b)(2)(K). Venue is proper pursuant to 28 U.S.C. Sec. 1409(a).
- 5. Plaintiffs are owners of residential property located at and commonly known as 12040 Brosius Road, Garrettsville, OH 44231 and located in Portage County, Ohio.
- 6. Said property of Plaintiffs is valued at \$55,000.00 per Schedule A of Debtors' bankruptcy schedules based upon the amount of repairs needed to said residence

- 7. Plaintiffs have a 1st mortgage on the 12040 Brosius Road, Garrettsville, OH 44231 property in the approximate sum of \$61,049.00 with Wells Fargo Bank.
- 8. Defendant J.P. Morgan Chase Bank is the holder of a 2nd mortgage lien on the 12040 Brosius Road, Garrettsville, OH 44231 property with a balance of approximately \$25,000.00.
- 9. Plaintiffs' Chapter 13 Plan provides for payment of Defendant J.P. Morgan Chase Bank's second mortgage as an unsecured claim and paid at the rate of 10%.
- 10. § 1322(b)(2) of the U.S. Bankruptcy Code permits a Debtor to modify the rights of holders of unsecured claims.
- 11. Taking into account that Defendant J.P. Morgan Chase Bank's second mortgage is wholly unsecured based upon the value of Plaintiffs' residence being less than the 1st mortgage lien, Defendant J.P. Morgan Chase Bank's claim for the second mortgage is <u>not</u> an allowed secured claim pursuant to §506(a) and Defendant J.P. Morgan Chase Bank must be paid for the second mortgage as and unsecured claim at the unsecured rate of Debtors' Plan and the mortgage lien voided pursuant to § 506(d).

WHEREFORE, Plaintiffs prays the Court for an Order declaring that Defendant J.P. Morgan Chase Bank's second mortgage be classified as a wholly unsecured claim and for an Order voiding the 2nd mortgage lien of J.P. Morgan Chase Bank pursuant to § 506(d).

/s/ Wayne W. Sarna
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